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Facsimile: (714) 427-7799

Attorneys for Defendants

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF  
CALIFORNIA

CHAD MCKINNEY, an individual,  
Plaintiff,

v.

APOLLO GROUP, INC.,  
UNIVERSITY OF PHOENIX, a  
Corporation, MECHELLE  
BONILLA, an Enrollment Manager  
at UNIVERSITY OF PHOENIX,  
KYAN FLYNN, Director of  
Enrollment at UNIVERSITY OF  
PHOENIX, APRIL ALCORN, an  
Employees Relations Consultant at  
UNIVERSITY OF PHOENIX,  
CARLYN LINDSTEN, Associate  
Director of Enrollment at  
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**DECLARATION OF NATHAN W.  
HICKS IN SUPPORT OF MOTION  
TO DISMISS PLAINTIFF'S  
COMPLAINT, OR IN THE  
ALTERNATIVE MOTION FOR  
MORE DEFINITE STATEMENT**

**[FRCP 12(b)(2); 12(b)(5); 12(b)(6);  
12(e).]**

**NO ORAL ARGUMENT, UNLESS  
REQUESTED BY THE COURT**

Date: April 21, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

\\HICKS\N\SWDMS\8638140

USDC-SOUTHERN DISTRICT CALIFORNIA  
CASE NO. 07-CV-2373 WQH CAB

DECL. OF NATHAN W. HICKS ISO MOTION TO DISMISS OR FOR MORE DEFINITE STATEMENT

1 I, Nathan W. Hicks, declare and state as follows:

2  
3 1. I am an attorney licensed to practice law before all courts of the State  
4 of California and I am a member of the law firm of Snell & Wilmer, attorneys of  
5 record for defendants Apollo Group, Inc. ("Apollo"), and Mechelle Bonilla, Kyan  
6 Flynn and Carlyn Linsten ("Individual Defendants") in this matter. I have personal  
7 knowledge of the matters set forth in this declaration, and if called upon as a  
8 witness, I could competently testify to them.

9  
10 2. According to McKinney's Return of Service filed with the Court on  
11 March 12, 2008, a process server attempted to serve Mechelle Bonilla "by leaving  
12 copies with Virginia Torres at defendant's place of employment" on February 4,  
13 2008. A true and correct copy of McKinney's Return of Service as reflected in the  
14 Court's website at [https://ecf.casd.uscourts.gov/cgi-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)  
15 [bin/DktRpt.pl?117733301982358-L\\_353\\_0-1](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1) is attached as Ex. A. According to  
16 McKinney's Return of Service filed with the Court on March 12, 2008, a process  
17 server attempted to serve Carlyn Lindsten "by leaving copies with Ellen Bowens  
18 (Administration) at defendant's place of employment" on January 31, 2008. A true  
19 and correct copy of McKinney's Return of Service as reflected in the Court's  
20 website at [https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)  
21 [L\\_353\\_0-1](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1) is attached as Ex. B. According to McKinney's Return of Service filed  
22 with the Court on March 12, 2008, a process server attempted to serve Kayn Flynn  
23 "by leaving copies with Ellen Bowens (Administration) at defendant's place of  
24 employment" on January 31, 2008. A true and correct copy of McKinney's Return  
25 of Service as reflected in the Court's website at [https://ecf.casd.uscourts.gov/cgi-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)  
26 [bin/DktRpt.pl?117733301982358-L\\_353\\_0-1](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1) is attached as Ex. C.

27  
28 3. On or about October 18, 2007, plaintiff, Chad McKinney

WICKSNSWDMS\8638140

- 2 -

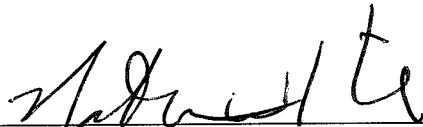
USDC-SOUTHERN DISTRICT CALIFORNIA  
CASE NO. 07-CV-2373 WQH CAB

DECL. OF N. HICKS ISO OF MOTION TO DISMISS OR FOR MORE DEFINITE STATEMENT

1 (“McKinney”), filed a Notice of Charge of Discrimination (“Charge”) with the  
 2 Equal Employment Opportunity Commission (“EEOC”) alleging Apollo Group,  
 3 Inc. engaged in retaliation against him in violation of Title VII of the Civil Rights  
 4 Act of 1964, as amended. On November 9, 2007, the EEOC sent a Dismissal and  
 5 Notice of Rights in response to McKinney’s Charge. True and correct copies of  
 6 McKinney’s Charge and the EEOC’s Notice of Dismissal as obtained from the  
 7 EEOC are attached as Exs. D and E.

8  
 9 I declare under penalty of perjury under the laws of the State of California  
 10 that the foregoing is true and correct.

11  
 12 Dated: March 14, 2008

13   
 14 Nathan W. Hicks

Snell & Wilmer

LLP  
 LAW OFFICES  
 600 Anton Boulevard, Suite 1400  
 Costa Mesa, California 92626-7689  
 (714) 421-7000

EXHIBIT A


EXHIBIT A, PAGE 4

07 cv 2373- WQH

FILED

2008 MAR 12 PM 4:49

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RETURN OF SERVICE			
Service of the Summons and Complaint was made by me		DATE <u>2/04/08</u> <span style="float: right;">VNH</span> DEPUTY	
NAME OF SERVER <u>R.T. Hansell</u>		TITLE <u>R.P.S.</u>	
Check one box below to indicate appropriate method of service:			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein: _____			
Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted: _____			
<input checked="" type="checkbox"/> Other (specify): <u>Served Mechelle Bonilla by leaving copies with Virginia Torres at defendant's place of employment.</u>			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$45
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on: <u>2/12/08</u> <div style="text-align: right;">Date</div>		<u></u> <div style="text-align: right;">Signature of Server</div>	
		<u>2445 Morena Blvd., Ste 206</u> <div style="text-align: right;">Address of Server</div>	
		<u>S.D. Ca. 92110</u> <div style="text-align: right;">Address of Server</div>	
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE			
IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. <u>COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</u>			
YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.			
JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

SAO 440 (Rev. 10/93) Summons in a Civil Action

## UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

### SUMMONS IN A CIVIL CASE

V.

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, MECHELLE BONILLA, an Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se  
6266 Madeline Street Apt. No. 61  
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**W. SAMUEL HAMRICK, JR.**

**JAN 15 2008**

CLERK

DATE

(By) DEPUTY CLERK

EXHIBIT A, PAGE 10

EXHIBIT B

EXHIBIT B, PAGE 7

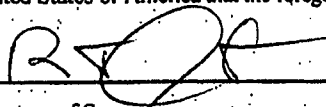
07 cv 2373-WQH

FILED

2008 MAR 12 PM 4:46

CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

RETURN OF SERVICE			
Service of the Summons and Complaint was made by me		DATE	1/31/08 YNH
NAME OF SERVER R.T. Hansell		TITLE R.P.S.	
Check one box below to indicate appropriate method of service			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein:  Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted:			
<input checked="" type="checkbox"/> Other (specify): Served Carlyn Lindsten by leaving copies with Ellen Bowens (Administration), at defendant's place of employment.			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$25
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on: 2/12/08		Date	
		Signature of Server 	
		2445 Morena Blvd, Ste 206	
		Address of Server S.D. Ca. 92110	
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE			
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YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.			
JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure



SAO 440 (Rev. 10/93) Summons in a Civil Action

## UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

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CASE NUMBER:

07 CV 2373 WQH-CAB

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se  
6266 Madeline Street Apt. No. 61  
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**W. SAMUEL HAMRICK, JR.**

JAN 3 6 2008

CLERK

DATE

(By) DEPUTY CLERK

EXHIBIT B, PAGE 9

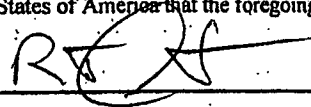
EXHIBIT C

EXHIBIT C PAGE 10

FILED

2008 MAR 12 PM 4:47

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RETURN OF SERVICE <span style="float: right;">07 cv 2373 - WQH</span>			
Service of the Summons and Complaint was made by me		DATE <u>1/31/08</u> <span style="float: right;">KMY DEPUTY</span>	
NAME OF SERVER <u>R.T. Hansell</u>		TITLE <u>R.P.S.</u>	
Check one box below to indicate appropriate method of service			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein: _____			
Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted: _____			
<input checked="" type="checkbox"/> Other (specify): <u>Served Kyan Flynn by leaving copies with Ellen Bowens (Administration) at defendant's place of employment.</u>			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$ <u>25</u>
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on: <u>2/12/08</u>		 Signature of Server	
Date		<u>2445 Morena Blvd. Ste 206</u> Address of Server <u>S.D. Ca. 92110</u>	
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE			
IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. <u>COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</u>			
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AO 440 (Rev. 10/93) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

## SUMMONS IN A CIVIL CASE

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, MECHELLE BONILLA, an Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se  
6266 Madeline Street Apt. No. 61  
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**W. SAMUEL HAMRICK, JR.**

**JAN 15 2008**

CLERK

DATE

(By) DEPUTY CLERK

EXHIBIT C PAGE 12

EXHIBIT D ~~EXHIBIT D~~

**DISMISSAL AND NOTICE OF RIGHTS**

To: Mr. Chad D. McKinney  
6266 Madeline Street, Apt. 61  
San Diego, CA 92115

From: Equal Employment Opportunity Commission  
401 'B' Street, Suite 1550  
San Diego, CA 92101

**COPY**

[ ] On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No.
488-2007-00775	Roger Owen	(619) 557-7235

**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- [ X ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- [ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.
- [ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- [ ] We cannot investigate your charge because it was not filed within the time limit required by law.
- [ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- [ ] While reasonable efforts were made to locate you, we were not able to do so.
- [ ] You had 30 days to accept a reasonable settlement offer that afford full relief for the harm you alleged.
- [ ] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- [ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- [ ] Other (briefly state) \_\_\_\_\_

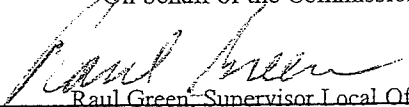
**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission

  
Raul Green, Supervisor Local Office

11/9/2007

(Date Mailed)

Enclosure(s)

cc: Apollo Group

EEOC Form 5 (5/01)

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

488-2007-00775

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Chad D. McKinney

Home Phone (Incl. Area Code)

(619) 634-3566

Date of Birth

03-29-1981

Street Address

6266 Madeline St., #61, San Diego, CA 92115

City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

APOLLO GROUP

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(480) 557-1280

Street Address

4615 E. Elwood Street, Phoenix, AZ 85040

City, State and ZIP Code

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE  
 Earliest Latest

08-07-2006

07-19-2007

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

1. ( See attached six page Statement of Facts )

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
 (month, day, year)

Date

Charging Party Signature

Statement of Facts

- 1) I was hired on August 7<sup>th</sup> 2006 as an Enrollment Counselor for the University of Phoenix. I was interviewed by Kyan Flynn, Barbara Keramati, and Andrea Beltran.
- 2) During the interviewing process I was told this was a salary position and there was not any mention that my salary would go down if I did not meet quotas for new applicants.
- 3) It was communicated to me that my salary could increase if I were to successfully meet the goals my employment matrix outlined. These goals were not completely outlined for me at that time, however Kyan Flynn communicated to me that laborious efforts, dedication, and job competency were required for an increase in salary to take effect.
- 4) After two months I realized that my salary was based on enrollment quotas.
- 5) There is a lot of pressure to meet sales quotas via harassing emails, vocalization of threats, and contests. Rewards, bonuses [of monetary value], and/or special treatment are given to those who enroll the most students.
- 6) The Higher Education Act prohibits universities from using sales quotas for enrollment counselors.
- 7) Though I often met my weekly "Osira" goals of; 3.5 appointments, 1.5 applications, and 2 referrals, it was often communicated to me that this was not enough. In several one on one meetings with my first manager Barbara Keramati I was reminded that I was a student with the University and that my tuition reimbursement would be revoked should I fail to meet my "goal" of enrolling at least four students per month, she stated to me several times that she did not wish for that to occur.
- 8) On the 19<sup>th</sup> of December, 2006 it was communicated via an email written by my manager Barbara Keramati and forwarded to the Directors of the company; Kyan Flynn and Kim Savich that my job performance was exceptional "kudos to Chad McKinney...Chad you are my hero!!!!!!!!!! 7 appointments and 6 apins [applications]..can it get any better than that?" Other employees were even encouraged to contact me for advice on how to improve their performance.
- 9) On a multitude of occasions from the end of February until I was terminated I received countless



harassing emails from the Associate Director of Enrollment; Carlyn Lindsten. These emails; threatened reductions in pay if enrollment quotas were not met, questioned the level of dedication I afforded to my job duties and if I was truly serious about my career with the company, why quotas for student enrollment were not met, and asked to "step it up" in condescending threatening fashion. These types of emails were sent out almost daily, and sometimes multiple times in one day.

- 10) I felt the enrollment practices of this company presented an ethical dilemma and decided to apply for a position as an Academic Counselor in the Academic department. I was also encouraged to do so by my then manager Barbara Keramati via email and one on one conversation. In late February I submitted my resume to Thomas Graneau Jr.
- 11) At the end of February or the beginning of March I was transferred from the Kearny Mesa campus to the downtown campus by Associate Director of Enrollment Carlyn Lindsten after voicing my concerns with the decision to her.
- 12) I was granted an interview for the Academic position and met with Thomas Graneau Jr. and Colleen Bjornson in early March.
- 13) I was not selected for the position of Academic Counselor.
- 14) Although Mechelle Bonilla was not my manager for the month of February she pressured me to sign a "Discussion Memo" that stated my performance fell below expectations of; appointments seen, applications, and students whom started class and that "failure to improve your performance may result in further disciplinary action up to and including termination."
- 15) Some of my applicants were given to other people in disregard to corporate policy on the 26<sup>th</sup> of March, 2007 because I questioned the legality of the university's enrollment practices in a previous conversation in early March with my second manager; Mechelle Bonilla.
- 16) My "lead base" [number of students in my data base available for contact] was reduced drastically by my manager Mechelle Bonilla from March until I was terminated, and several of these students were transferred and assigned to Alison Herring.

- 17) My work schedule was changed without consultation by the Associate Director of Enrollment Carlyn Lindsten on the 26<sup>th</sup> of March, 2007 in order to make everyone available for "QC" [Qualifying Center] telephone calls to "help everyone hit their goal!" The amount of QC calls I received dwindled from March onward, and I did not receive any QC calls in June or July of 2007.
- 18) I was asked then pressured to sign documents that I felt were untrue relating to my performance.
- 19) My salary was reduced because I did not "meet goal" in May from \$37,000 to \$35,500.
- 20) I contacted the independent office of Ombuds Services anonymously in the beginning of June to research my options in hopes of protecting myself from further retaliatory acts taken by the company against me for voicing concerns with company policy.
- 21) I submitted my claims, and evidence in support of said claims, to the Human Resources department, Employee Relations Consultant; April Alcorn, on June 11, 2007.
- 22) I was told in a telephone conversation on the 11<sup>th</sup> of June, 2007 by April Alcorn that the issue would be resolved in two weeks.
- 23) On the 12<sup>th</sup> of June, 2007 April Alcorn sent me an email stating "I received your fax and will be looking into your concerns."
- 24) The university continued to create a hostile work environment for myself, after I had demanded that it cease and desist. I was harassed with emails threatening termination on the 20<sup>th</sup> of June, 2007 by co-worker Alison Herring and approved of by my manager Mechelle Bonilla if I did not participate and perform adequately in a team "blitz" at 11:30. Team "blitzs" are designated times [by the manager], three times a day, in which we are expected to not leave our cubicle, make as many telephone dials as possible, and schedule as many students possible for appointments. The subject title read "IF YOU DON[']T BLITZ AT 11:30 MECHELLE SAYS YOU'RE FIRED!" The top performing Enrollment Counselor on Mechelle Bonilla's "team"; Bertha Castillo even responded to this email to justify her absence from this "blitz". Enrollment Counselor Fran Beadles also called in from the Palm Desert campus to Mechelle Bonilla on that day to voice her concerns with the email. At the conclusion of the telephone conversation she was

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- 38) I did not receive any type of notification of resolution from April Alcorn or any other interested parties regarding my claims against the company by one o'clock in the afternoon. When I attempted to contact April Alcorn after 1:00 on the 13<sup>th</sup> of July, 2007 a gentleman [whose name I do not recall] answered her personal work line. He attempted to pry me for information regarding my claims and agreed to leave a message for her.
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- 41) On July 13<sup>th</sup>, 2007, I notified April Alcorn and Mechelle Bonilla via email that I would take a 10 day non-paid vacation in order to provide them enough time to rectify the situation. I provided my personal email account, should they need to contact me immediately.
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- 47) The second letter stated, "You failed to report to work at the designated date and time. Consistent with our policy, the Company has chosen to separate your employment effective July 19<sup>th</sup>, 2007."
- 48) The third and final letter stated, "Please be advised that the Apollo Group, Inc. has reviewed your concerns and we find no evidence to support any findings of the San Diego Enrollment Department violating Company policies or procedures as outlined by your allegations."

EXHIBIT E

EXHIBIT E, PAGE 22

EEOC FORM 131 (5/01)

## U.S. Equal Employment Opportunity Commission

<b>APOLLO GROUP</b> <b>4615 E. Elwood Street</b> <b>Phoenix, AZ 85040</b>	PERSON FILING CHARGE
	<b>Chad D. McKinney</b>
	THIS PERSON (check one or both) <input type="checkbox"/> Claims To Be Aggrieved <input type="checkbox"/> Is Filing on Behalf of Other(s)
	EEOC CHARGE NO. <b>488-2007-00775</b>

## NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- ☒ Title VII of the Civil Rights Act
 ☐ The Americans with Disabilities Act  
☐ The Age Discrimination in Employment Act
 ☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☒ No action is required by you at this time.
2. ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.
3. ☐ Please provide by \_\_\_\_\_ a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by \_\_\_\_\_ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☐ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by \_\_\_\_\_ to \_\_\_\_\_
- If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

**Roger A. Owen,**  
**Investigator**

EEOC Representative

Telephone **(619) 557-7283**

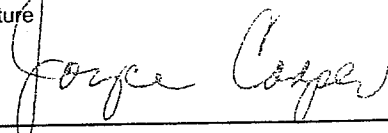
**San Diego Local Office**  
**401 B Street**  
**Suite 510**  
**San Diego, CA 92101**

Enclosure(s): ☒ Copy of Charge

## CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- ☐ RACE
 ☐ COLOR
 ☐ SEX
 ☐ RELIGION
 ☐ NATIONAL ORIGIN
 ☐ AGE
 ☐ DISABILITY
 ☒ RETALIATION
 ☐ OTHER

See enclosed copy of charge of discrimination.

Date <b>October 29, 2007</b>	Name / Title of Authorized Official <b>Joyce E. Cooper,</b> <b>Local Office Director</b>	Signature 
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## INFORMATION ON CHARGES OF DISCRIMINATION

### EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

**Section 1602.14 Preservation of records made or kept.** . . . . Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

### NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

### NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.



EEOC Form 5 (5/01)

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

488-2007-00775

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Chad D. McKinney

Home Phone (Incl. Area Code)

(619) 634-3566

Date of Birth

03-29-1981

Street Address

City, State and ZIP Code

6266 Madeline St., #61, San Diego, CA 92115

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

APOLLO GROUP

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(480) 557-1280

Street Address

City, State and ZIP Code

4615 E. Elwood Street, Phoenix, AZ 85040

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE  
 Earliest Latest

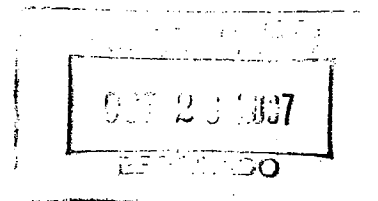
08-07-2006

07-19-2007

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

1. ( See attached six page Statement of Facts )



I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
 (month, day, year)

3/10/18/2007 x C I m k  
 Date Charging Party Signature

Statement of Facts

- 1) I was hired on August 7<sup>th</sup> 2006 as an Enrollment Counselor for the University of Phoenix. I was interviewed by Kyan Flynn, Barbara Keramati, and Andrea Beltran.
- 2) During the interviewing process I was told this was a salary position and there was not any mention that my salary would go down if I did not meet quotas for new applicants.
- 3) It was communicated to me that my salary could increase if I were to successfully meet the goals my employment matrix outlined. These goals were not completely outlined for me at that time, however Kyan Flynn communicated to me that laborious efforts, dedication, and job competency were required for an increase in salary to take effect.
- 4) After two months I realized that my salary was based on enrollment quotas.
- 5) There is a lot of pressure to meet sales quotas via harassing emails, vocalization of threats, and contests. Rewards, bonuses [of monetary value], and/or special treatment are given to those who enroll the most students.
- 6) The Higher Education Act prohibits universities from using sales quotas for enrollment counselors.
- 7) Though I often met my weekly "Osira" goals of; 3.5 appointments, 1.5 applications, and 2 referrals, it was often communicated to me that this was not enough. In several one on one meetings with my first manager Barbara Keramati I was reminded that I was a student with the University and that my tuition reimbursement would be revoked should I fail to meet my "goal" of enrolling at least four students per month, she stated to me several times that she did not wish for that to occur.
- 8) On the 19<sup>th</sup> of December, 2006 it was communicated via an email written by my manager Barbara Keramati and forwarded to the Directors of the company; Kyan Flynn and Kim Savich that my job performance was exceptional "kudos to Chad McKinney...Chad you are my hero!!!!!!!!!! 7 appointments and 6 apins [applications]..can it get any better than that?" Other employees were even encouraged to contact me for advice on how to improve their performance.
- 9) On a multitude of occasions from the end of February until I was terminated I received countless

harassing emails from the Associate Director of Enrollment; Carlyn Lindsten. These emails; threatened reductions in pay if enrollment quotas were not met, questioned the level of dedication I afforded to my job duties and if I was truly serious about my career with the company, why quotas for student enrollment were not met, and asked to "step it up" in condescending threatening fashion. These types of emails were sent out almost daily, and sometimes multiple times in one day.

- 10) I felt the enrollment practices of this company presented an ethical dilemma and decided to apply for a position as an Academic Counselor in the Academic department. I was also encouraged to do so by my then manager Barbara Keramati via email and one on one conversation. In late February I submitted my resume to Thomas Graneau Jr.
- 11) At the end of February or the beginning of March I was transferred from the Kearny Mesa campus to the downtown campus by Associate Director of Enrollment Carlyn Lindsten after voicing my concerns with the decision to her.
- 12) I was granted an interview for the Academic position and met with Thomas Graneau Jr. and Colleen Bjornson in early March.
- 13) I was not selected for the position of Academic Counselor.
- 14) Although Mechelle Bonilla was not my manager for the month of February she pressured me to sign a "Discussion Memo" that stated my performance fell below expectations of; appointments seen, applications, and students whom started class and that "failure to improve your performance may result in further disciplinary action up to and including termination."
- 15) Some of my applicants were given to other people in disregard to corporate policy on the 26<sup>th</sup> of March, 2007 because I questioned the legality of the university's enrollment practices in a previous conversation in early March with my second manager; Mechelle Bonilla.
- 16) My "lead base" [number of students in my data base available for contact] was reduced drastically by my manager Mechelle Bonilla from March until I was terminated, and several of these students were transferred and assigned to Alison Herring.

- 17) My work schedule was changed without consultation by the Associate Director of Enrollment Carlyn Lindsten on the 26<sup>th</sup> of March, 2007 in order to make everyone available for "QC" [Qualifying Center] telephone calls to "help everyone hit their goal!" The amount of QC calls I received dwindled from March onward, and I did not receive any QC calls in June or July of 2007.
- 18) I was asked then pressured to sign documents that I felt were untrue relating to my performance.
- 19) My salary was reduced because I did not "meet goal" in May from \$37,000 to \$35,500.
- 20) I contacted the independent office of Ombuds Services anonymously in the beginning of June to research my options in hopes of protecting myself from further retaliatory acts taken by the company against me for voicing concerns with company policy.
- 21) I submitted my claims, and evidence in support of said claims, to the Human Resources department, Employee Relations Consultant; April Alcorn, on June 11, 2007.
- 22) I was told in a telephone conversation on the 11<sup>th</sup> of June, 2007 by April Alcorn that the issue would be resolved in two weeks.
- 23) On the 12<sup>th</sup> of June, 2007 April Alcorn sent me an email stating "I received your fax and will be looking into your concerns."
- 24) The university continued to create a hostile work environment for myself, after I had demanded that it cease and desist. I was harassed with emails threatening termination on the 20<sup>th</sup> of June, 2007 by co-worker Alison Herring and approved of by my manager Mechelle Bonilla if I did not participate and perform adequately in a team "blitz" at 11:30. Team "blitzs" are designated times [by the manager], three times a day, in which we are expected to not leave our cubicle, make as many telephone dials as possible, and schedule as many students possible for appointments. The subject title read "IF YOU DON[']T BLITZ AT 11:30 MECHELLE SAYS YOU'RE FIRED!" The top performing Enrollment Counselor on Mechelle Bonilla's "team"; Bertha Castillo even responded to this email to justify her absence from this "blitz". Enrollment Counselor Fran Beadles also called in from the Palm Desert campus to Mechelle Bonilla on that day to voice her concerns with the email. At the conclusion of the telephone conversation she was

- berated in the Downtown office by Mechelle Bonilla and Alison Herring for being a "nuisance" and was also referred to as an "idiot".
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**McKinney v. Apollo Group, Inc., et al.**  
**USDC, Southern – Case No. 07-CV-2373**

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On March 20, 2008, I served, in the manner indicated below, the foregoing document described as

**DECLARATION OF NATHAN W. HICKS IN SUPPORT OF MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT, OR IN THE ALTERNATIVE, MOTION  
FOR MORE DEFINITE STATEMENT**

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

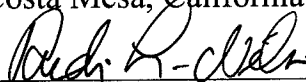
I am employed in the office of a member of the bar of this court at whose direction the service was made.

**Please See Attached Service List**

- ☐ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)).
- ☐ BY FACSIMILE: (C.C.P. § 1013(e)(f)) and by e-mail
- ☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).
- ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 20, 2008, at Costa Mesa, California.

  
Rudi L. Wilson



**McKinney v. Apollo Group, Inc., et al.**  
**USDC, Southern – Case No. 07-CV-2373**

<p>Chad McKinney  Pro Se  6266 Madeline Street, Apt. #61  San Diego, CA 92115  (619) 634-3566</p>	<p>Plaintiff, Pro Se</p>
<p>United States District Court  Attention: Hon. Judge William Q. Hayes  Courtroom 4  880 Front Street, Room 4290  San Diego, CA 92101-8900  (619) 557-5600</p>	<p>Courtesy Copy</p>

**Snell & Wilmer**  
LLP  
LAW OFFICES  
600 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626-7689  
(714) 427-7000